

GAHC010153312017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7804/2017

EXTC-61624-RECT/BB SAHAB SINGH
S/O LATE RAMPHAL R/O VILL AND PO ATWALA, TAHSIL MATLODHA,
DIST. PANIPAT, HARYANA, PIN-132103

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-
793011

2:THE DIRECTOR GENERAL

ASSAM RIFLES
SHILLONG
MEGHALAYA-793011

3:THE DEPUTY COMMANDANT
STAFF OFFICER-1 RECRUITMENT
DIRECTORATE GENERAL
ASSAM RIFLES
SHILLONG-11

4:THE DEPUTY COMMANDANT
ASSAM RIFLES
TRANSIT CAMP
KHANAPARA
GUWAHATI ASSAM
PIN-78102

Advocate for the Petitioner : MR.H BEZBARUAH

Advocate for the Respondent : MRS. R DEVI (CGC)

WP(C) 7804/2017

ExTC-61624-Rect/BB Sahab Singh,

..... Petitioner,

Vs.

The Union of India & Ors.,

..... Respondents.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri R Mazumdar, Advocate.

For the Respondents : Mrs. R Devi, Central Govt. Counsel.

Dates of Hearing : 03.05.2024.

Date of Judgment : 03.05.2024.

JUDGMENT & ORDER

Heard Shri R Mazumdar, learned counsel for the petitioner. Also heard Ms. R Devi, learned Central Government Counsel (CGC).

2. The present case has a chequered history and bereft of the details, the

necessary facts which are required to be taken into consideration are narrated hereinbelow.

3. The facts projected in the petition are that he was appointed as a Rect. Barber in the Assam Rifles in the year 2001 and was sent to training at Dimapur. However, in October, 2001, he was discharged from his service along with about 90 other persons on medical grounds. The ground assigned so far as the petitioner is concerned is 'Fine Tremors' of the hands. The aforesaid orders of discharge were the subject matter of challenge in a number of writ petitions, including WP(C)/6721/2005 filed by the petitioner. The aforesaid writ petitions were disposed of by this Court vide order dated 10.08.2012 whereby a fresh Appellate Medical Board was directed to be constituted. The Court, however, made it clear that no observation was made on the *inter-se* merits. Subsequent thereto, an Appellate Medical Board was constituted which examined the petitioner and vide a communication dated 27.12.2012, the petitioner has been held to be unfit. The petitioner has also brought on record an order dated 26.09.2014 passed by a Division Bench of this Court in a number of writ appeals, including WA/153/2014 wherein the matters were remanded for fresh consideration on the ground that though those incumbents were held to be medically fit, they were not re-inducted in the service on the ground of over-aged.

4. Shri Mazumdar, learned counsel for the petitioner has submitted that though the petitioner in the present case has been held to be unfit, such decision is not preceded by a due process recognized by law. It is submitted that the admitted ground of discharge on medical fitness is that the petitioner

was having Fine Tremors of the hands. The learned counsel by referring to the SOP which has been annexed to the affidavit-in-opposition of the respondents has submitted that the aforesaid ground can be related to the ground under Sl. No. (h) which is with regard to the mental and nervous instability. Reference has also been made to an order dated 15.09.2021 passed in this case wherein the aspect of requirement of examination by a Specialist (Neurologist) in the case of the petitioner was made. By referring to the note wherein the petitioner has been held to be unfit, learned counsel for the petitioner has highlighted that the Board was not having any Neurologist as a Specialist and the Specialist whose name and signature appear is of Medicine. Reference has also been made to the present SOP as per which, Tremors without organic cause has been declared to be minor acceptable defects.

5. Shri Mazumdar, learned counsel has also placed before this Court copies of number of orders passed in similarly situated cases wherein reliefs were granted to the incumbents with the liberty to hold fresh medical examination of those incumbents. The details of the orders are as follow:

- i)** WP(C)/2225/2016 (Ex. TC-62078 Rect/BB Rambir Vs. Union of India & Ors.);
- ii)** WP(C)/5172/2016 (Ex TC-62091 Rect/GD Satbir Singh Vs. Union of India & Ors.); and
- iii)** Ex TC-M/371384 Rect/NA Sri Sant Lal Vs. Union of India).

6. *Per contra*, Ms. Devi, learned CGC has submitted that the initial induction of the petitioner was on the condition that he should be medically fit. When it

was detected during the time of training that the petitioner was not medically fit, he was discharged from his service on 31.10.2001. The earlier round of litigation instituted by the petitioner, being WP(C)/6721/2005 which required re-examination by a fresh Medical Board was done upon which the petitioner was found to be unfit. The learned CGC has submitted that there is a vast distinction of facts regarding the present case and the cases cited by the petitioner inasmuch as in those cases, either the incumbents were found fit but were not allowed to join on the ground of overaged and in few cases, the declarations to hold the incumbents unfit were followed by the report of a Specialist. She submits that in the instant case, none of the two conditions are available for the petitioner as he was found ineligible, both in terms of being over-aged and unfit. Ms. Devi, learned CGC has also highlighted the aspect of delay in approaching the Court inasmuch as the writ petition was filed in the year 2017 on a cause of action which had arisen in 2012.

7. Shri Mazumdar, learned counsel for the petitioner in his rejoinder has submitted that the order passed by the Hon'ble Division Bench dated 26.09.2014 is only on the aspect to take care of the situation of being over-aged. He clarifies that the petitioner has made an independent challenge on the findings of the Appellate Medical Board to term the petitioner as unfit. As regards the objection regarding the delay, he submits that appropriate explanations have been given to explain the delay in paragraph 20 of the writ petition.

8. The rival submissions have been duly considered and the materials available on records have been carefully examined.

9. At the outset, let this Court deal with the aspect of the objection of delay in approaching this Court. This Court is a Court of Equity and the conduct of the parties is of paramount importance and delay/laches in approaching the Court is a relevant factor. In the instant case, the cause of action had arisen in the year 2012 and admittedly, the writ petition has been filed in 2017. Though there may not be a strict application of the Limitation Act, 1963 in a writ proceeding, the aspect of laches would always be there and would be a relevant factor for consideration. The explanations given by the petitioner in paragraph 20 are not found to be cogent and acceptable. Having said that, this petition was filed in the year 2017 and is being considered after about 7 years and rejection of the petition on the ground of delay without going into the merits after 7 years of the same being pending would not be a fair treatment. Accordingly, though a case of delay appears to have been made out, this Court, in the interest of justice would overlook the said aspect.

10. The challenge is with regard to the findings of the Appellate Medical Board dated 27.12.2012 which has declared the petitioner to be unfit.

11. Though an objection with regard to the age has also been raised by the respondents, in view of the order dated 26.09.2014 passed by the learned Division Bench, the said objection would not be a sustainable objection. As regards the remark of unfit, the primary contention is that the said finding was arrived at by a Board without there being a Specialist in the field of the particular reason assigned, namely, Fine Tremors of the hands. The SOP which has been placed on record would show that the said cause can be related to the

ground under Sl. No. (h) 'Mental and Nervous Instability' which would naturally require examination by a Specialist of Neurology. The Appellate Medical Board though had a Specialist, the same was on the field of Medicine and not Neurology.

12. As regards the orders of this Court passed in similarly situated cases, the findings of holding the incumbent unfit were followed by a report of a Specialist. Though the facts of the present case are apparently distinguishable what would however require is an opinion of a Specialist (Neurologist) so far as the Medical unfitness of the petitioner is concerned which admittedly does not appear to have been done from the materials placed on records.

13. In view of the above, this Court is of the considered opinion that interest of justice would meet if a direction of the following nature is given:

- i)** The case of the petitioner regarding his fitness be re-examined by a duly constituted Review Medical Board which is required to have one Specialist in the field of Neurology to examine the petitioner;
- ii)** The findings of such Board would be final in view of the facts and circumstances that the aspect of medical fitness of the petitioner was already gone into by two medical boards earlier; and
- iii)** If the Review Medical Board, as directed to be constituted, comes to a finding that the petitioner being medically fit, the aspect of overage would not come into in view of the order passed by the

Hon'ble Division Bench on 26.09.2014 in WA/153/2014.

14. With the aforesaid directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant